THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.6109 OF 2006

DATED: 27-03-2006

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Between

M/s. Gold Stone Exports Limited,

Having its office at 9-1-83 & 84,

S.D. Road, Secunderabad –3,

Rep. by its Director,

Mr. P.V.S. Sarma,

S/o. Late Venkateswarlu,

Occ: Director, R/o. 1-1-780/A/12,

Sri Apartments, Gandhi Nagar,

Hyderabad.

…PETITIONER

AND

The Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Town Planning

Section, Secunderabad Division,

MCH Building, Tank Bund Road, Hyderabad.

…RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondent in issuing proceedings No. /TP/SD/MCH/2006 dated 25.03.2006 (notice under Section 636 of Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioner-company submits that the petitioner-company is a Company incorporated under the provisions of the Indian Companies Act, 1956 and it is engaged in the business of supplying cable jointing kits to the Department of Telecommunications. He further submits that the petitioner-company purchased the cellar area in Amarchand Sarma Complex situated at S.D. Road with a built up area of 29,549.75 sq. feet consisting of about 10,000 sq. feet as departmental stores, about 8,000 sq. feet as an exclusive parking area of the petitioner-company and a further extent of 11,549.75 sq. feet for drive ways, stair cases, lift wells etc. This property was purchased form M/s. Amar Builders under a registered sale deed bearing Document No.59.1996 dated 01.02.1996 and the premises was shown as commercial premises for which a sanctioned plan was existing.

The builders after obtaining required sanction from the municipal corporation constructed the said complex in a phased manner by the year 1992.

While so, the respondent without issuing any show cause notice, issued a notice in Proceedings No. /TP/SD/MCH/2006 dated 25.03.2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case,
the impugned notice dated 25-03-2006 in Proceedings
No. /TP/SD/MCH/2006 is directed to be treated as a show cause notice only permitting the petitioner to file an explanation/representation within one week from the date of receipt of a copy of this order and on such an explanation being filed and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents shall not remove or demolish the premises of the petitioner.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

March 27, 2006

DSK